TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1927

No. [redacted] 142

JAMES W. WUCHTER, PLAINTIFF IN ERROR,

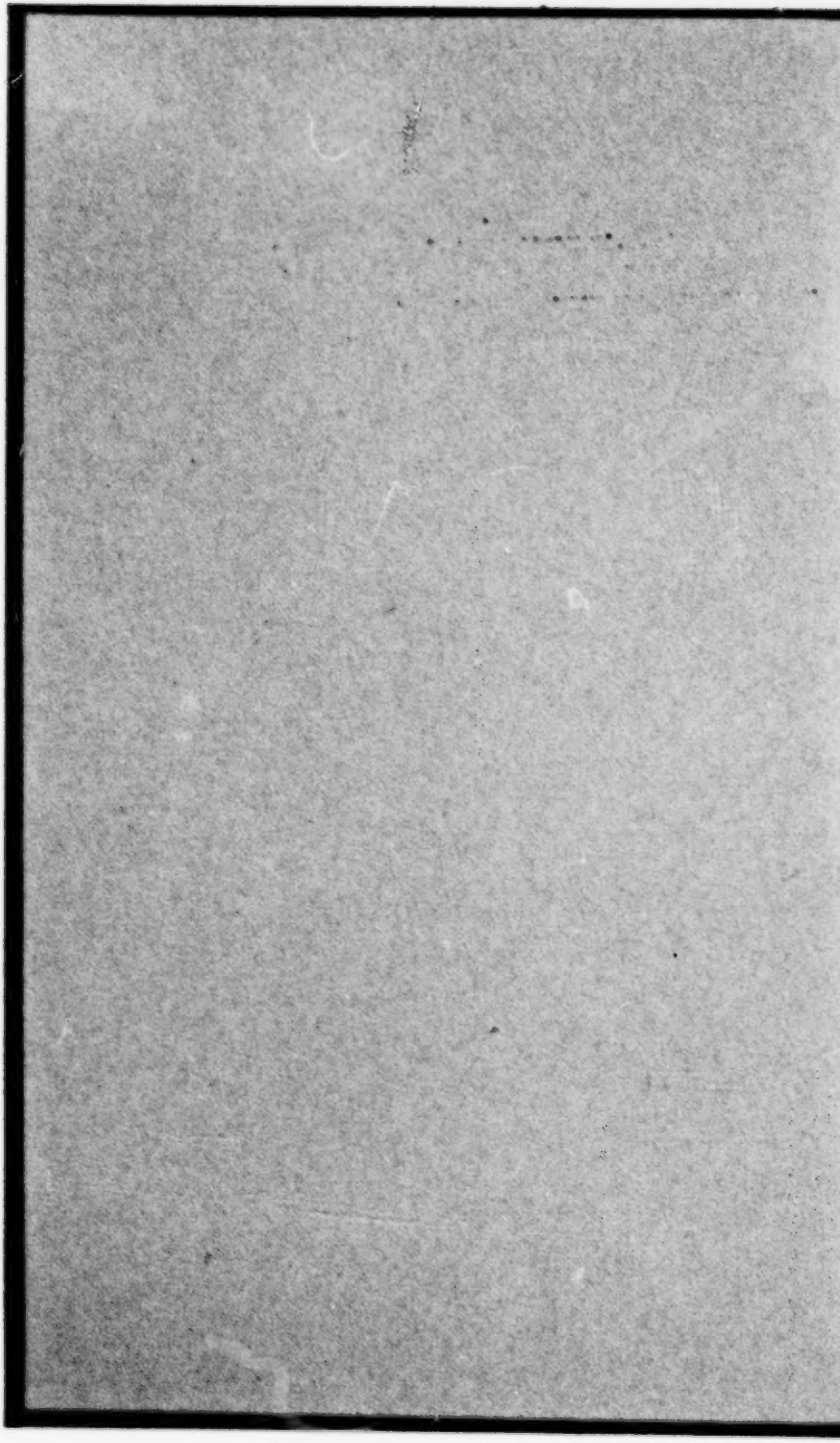
vs.

MICHAEL PIZZUTTI.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

FILED NOVEMBER 14, 1927

(32,306)



(32,296)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. 729

JAMES W. WUCHTER, PLAINTIFF IN ERROR,

vs.

MICHAEL PIZZUTTI

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 1, 1927

[fol. 1]

IN SUPREME COURT OF NEW JERSEY

Judgment Record on Writ of Inquiry and Inquisition

SUMMONS

State of New Jersey to James W. Wuchter:

You are summoned to answer the annexed complaint of Michael Pizzutti in an action at law in the New Jersey Supreme Court. And take notice that unless you file your answer to the said complaint with the Clerk of the New Jersey Supreme Court, at Trenton, N. J., within twenty days after service upon you of this writ, and the annexed complaint the plaintiff may proceed in the suit and judgment be entered against you.

Witness William S. Gummere, Chief Justice of New Jersey Supreme Court, at Trenton, New Jersey, this 16th day of November, Nineteen Hundred and Twenty-five.

Edward J. Kelleher, Clerk. Jacob R. Mantel, Attorney. (L. S.)

[fol. 2] IN SUPREME COURT OF NEW JERSEY

MICHAEL PIZZUTTI, Plaintiff,

vs.

JAMES W. WUCHTER, Defendant

BILL OF COMPLAINT AND SHERIFF'S RETURN

First Count

Plaintiff, Michael Pizzutti, residing in the City of Summit, County of Union and State of New Jersey, says that:

1. On or about the 17th day of September, 1925, the plaintiff, Michael Pizzutti, was driving a team of horses on a public highway, known as Hawthorne Parkway, in the Township of Millburn, County of Essex and State of New

[fol. 1]

IN SUPREME COURT OF NEW JERSEY

Judgment Record on Writ of Inquiry and Inquisition

SUMMONS

State of New Jersey to James W. Wuchter:

You are summoned to answer the annexed complaint of Michael Pizzutti in an action at law in the New Jersey Supreme Court. And take notice that unless you file your answer to the said complaint with the Clerk of the New Jersey Supreme Court, at Trenton, N. J., within twenty days after service upon you of this writ, and the annexed complaint the plaintiff may proceed in the suit and judgment be entered against you.

Witness William S. Gummere, Chief Justice of New Jersey Supreme Court, at Trenton, New Jersey, this 16th day of November, Nineteen Hundred and Twenty-five.

Edward J. Kelleher, Clerk. Jacob R. Mantel, Attorney. (L. S.)

[fol. 2] IN SUPREME COURT OF NEW JERSEY

MICHAEL PIZZUTTI, Plaintiff,

vs.

JAMES W. WUCHTER, Defendant

BILL OF COMPLAINT AND SHERIFF'S RETURN

First Count

Plaintiff, Michael Pizzutti, residing in the City of Summit, County of Union and State of New Jersey, says that:

1. On or about the 17th day of September, 1925, the plaintiff, Michael Pizzutti, was driving a team of horses on a public highway, known as Hawthorne Parkway, in the Township of Millburn, County of Essex and State of New

Jersey, and was driving the said team of horses on the right side of said road in a careful and prudent manner.

2. At the same time and place as mentioned in paragraph one hereof, the defendant was driving an automobile in a rapid, careless and negligent manner and without any warning crashed into the rear of the said wagon, which the [fol. 3] plaintiff was driving and upon which the plaintiff was seated.

3. As a result of the negligence of the defendant, the plaintiff, Michael Pizzutti, sustained severe and permanent injuries and he suffered to a great extent both physically and mentally and was obliged to remain away from his employment for a long period of time in an endeavor to cure the injuries to his body, limbs and nervous system and will in the future be handicapped for life as a result of said injuries.

Second Count

Paragraphs one and two of the first count are hereby repeated and made paragraphs one and two of the second count.

3. As a result of the carelessness and negligence of the said defendant, James W. Wuchter, the horses, wagon and harness of the plaintiff were greatly damaged to the loss of the plaintiff herein.

Third Count

Paragraphs one and two of the first count are hereby repeated and made paragraphs one and two of the third count.

3. As a result of the carelessness and negligence of the defendant, James W. Wuchter, the plaintiff was obligated to hire a team of horses and wagon in order to conduct his [fol. 4] business to his great damage.

Plaintiff demands as damages on the first count in the sum of $1,500, the sum of $1,000 on the second count and the sum of $500 on the third count.

Jacob R. Mantel, Attorney for Plaintiff.

I hereby deputize and appoint George B. Hulit of Pennington, N. J., a Special Deputy, to serve the within writ and make return thereto. Witness my hand and seal this 19th day of Nov. A. D. 1925.

Chas. Reichert, Sheriff of Mercer County. (L. S.)

Served within Summons and Complaint November 19th, A. D. 1926, upon James W. Wuchter, Deft., by leaving a copy of the same in the office of the Secretary of State, N. J., with Ernest R. Kerr, Chief Clerk in said Office (the Secretary of State being absent from his office), with a service fee of Two Dollars.

Charles H. Reichert, Sheriff.

Sheriff's Fees	$3 62
Sec. of State	2 00
	$5 62

[fol. 5] In Supreme Court of New Jersey

[Title omitted]

Rule for Judgment Interlocutory by Default. January 6, 1926

The summons and complaint in this cause having been duly served upon the defendant on November 19th, 1925, and defendant having failed to file an answer or take any other step in response to the complaint, within the time limited by the rules of Court:

It is ordered that Judgment interlocutory be entered against the defendant, James W. Wuchter, and in favor of the plaintiff, Michael Pizzutti, and that a writ of inquiry do issue, directed to the Sheriff of the County of Union, to assess the damages which the plaintiff has sustained.

On motion of

Jacob R. Mantel, Attorney for Plaintiff.

Rule entered this 6th day of January, 1926.

[fol. 6] In Supreme Court of New Jersey

[Title omitted]

Notice of Writ of Inquiry and Affidavit of Service.—Filed February 19, 1926

Sir: Take notice that a writ of inquiry of damages will be executed in this cause, on Wednesday the 27th day of January next, at 10:30 o'clock in the forenoon of that day, at the Court House at the City of Elizabeth.

Yours, etc., Jacob R. Mantel, Attorney for Plaintiff.

To James W. Wuchter, Defendant.

[fol. 7] State of Pennsylvania,
County of Lehigh, ss:

On this sixteenth day of January, 1926, personally appeared before me John H. Diefenderfer, who being by me duly sworn according to law, deposes and says that he is over the age of twenty one, and that he served a copy of the within notice personally upon James W. Wuchter, at his residence 103 S. Madison Street, Allentown, Pa., the day and year first above written.

John H. Diefenderfer.

Sworn and subscribed before me this 18th day of January, 1926. Ruth C. Ricker, Notary Public. My commission expires Jan. 15, 1927. (Seal.)

[fol. 8] [Title omitted]

Affidavit of Jacob R. Mantel

State of New Jersey,
County of Union, ss:

Jacob R. Mantel, of full age, being duly sworn according to law on his oath, deposes and says:

I am the attorney for the plaintiff in the above entitled matter. I caused to be served upon James W. Wuchter,

the defendant herein, a notice of the execution of the writ of inquiry in this matter and also a notice of motion to enter up judgment final in this matter. I paid to John H. Diefenderfer, the sum of five dollars ($5) for his services in connected with serving these papers upon the defendant. It was necessary to make this service out of the State of New Jersey, to wit, Allentown, Pennsylvania, the residence of [fol. 9] the defendant. I therefore request that the sum of $5 be included in the tax costs in this mater.

Jacob R. Mantel.

Sworn and subscribed to before me this 17th day of February, 1926. (Signature illegible.) An Attorney at-law of New Jersey.

In Supreme Court of New Jersey

Writ of Inquiry—Filed February 18, 1926

State of New Jersey,
Union County, ss:

An inquisition, intended and taken at the Court House in Elizabeth, in the County of Union, on the Twenty seventh day of January, A. D., 1926, before Harry Simmons, Sheriff of the County of Union, by virtue of the Writ of Inquiry to the said Sheriff directed and to this inquisition annexed, to inquire of certain matters in the said writ specified by the oath of George Carroll, William Runyon, Raymond Bolle, Moe Lowy, Walter Scholes, Charles Lieb, Theodore Pfarrer, Harry Woelfel, Moses Fletcher, Fred W. Marhart, William F. Krauss, John J. Lawrence, honest and lawful men of said County, who, upon their oath and affirmation aforesaid, say:

That they find in favor of the plaintiff, Michael Pizzutti, [fol. 10] and against the defendant, James W. Wuchter, in the sum of Seven Hundred and Seventy Dollars and Twenty five cents ($770.25) as follows:

Loss of services, 6 weeks at $90 per week	$540 00
Injuries to horse	150 00
Harness	65 00
Repair to wagon	10 25
Dr. Tator, medical bill	5 00
	$770 25

In witness whereof, as well I, the said Sheriff as the said Jurors, have hereto set their hands and seals to this inquisition, the day and year above written.

Harry Simmons, Sheriff. Geo. T. Carroll (L. S.), Theo. Pfarrer (L. S.), Wm. Runyon (L. S.), Harry Woelfel (L. S.), Raymond Bolle (L. S.), M. Fletcher (L. S.), Moses Lowy (L. S.), Fred W. Marhart (L. S.), Walter Scholes (L. S.), Wm. F. Krauss (L. S.), Chas. O. Lieb (L. S.), J. L. Lawrence (L. S.).

[fol. 11] Union County, ss:

The State of New Jersey to the Sheriff of the County of Union, Greeting:

Whereas James W. Wuchter was summoned to appear in the New Jersey Supreme Court, Union Circuit,
(Seal) to answer unto Michael Pizzutti, in an action at law for that, on or about the 17th day of September, 1925, the defendant drove his automobile in a careless, negligent and reckless manner on a public highway known as Hawthorne Parkway, Millburn Township, County of Essex and State of New Jersey, and as a result thereof crashed into the horses and wagon that the plaintiff was driving carefully on said highway, damaging the plaintiff therefor and plaintiff demanding as damages the sum of ($3,000) Three Thousand Dollars, and such proceedings were thereupon had in our said Court that the said Michael Pizzutti ought to recover against the said James W. Wuchter, his damages on occasion of the premises: But because it is unknown to our said Court what damages the said Michael Pizzutti hath sustained by reason thereof, therefore we command you that by the oath, or if conscientiously scrupulous of taking an oath, by the solemn affirmation of

twelve good and lawful men of your county, you diligently inquire what damages the said Michael Pizzuti hath sustained, as well by reason of the premises, as for his costs and charges by him about his suit in this behalf expended. [fol. 12] And that you send to our said Court, before our Judge thereof, at Trenton, on the third Tuesday of Feb. next, the inquisition which you shall thereupon take, under your seal and the seals of those by whose oath or affirmation you shall take the inquisition, together with this writ.

Witness William S. Gummere, Esq., Chief Justice of the New Jersey Supreme Court, at Trenton, the sixth day of January in the year of our Lord, One thousand nine hundred and twenty-five.

Edward J. Kelleher, Clerk. Jacob R. Mantel, Attorney.

[fol. 13] [File endorsement omitted.]

[fol. 14] In Supreme Court of New Jersey

[Title omitted]

Notice of Motion for Final Judgment—Filed February 19, 1926

Sir: Take notice that the writ of inquiry of damages issued in the above entitled cause has been executed and returned; and that on Saturday, the 13th day of February, 1926, I will move before Honorable Samuel Kalisch, Justice of the New Jersey Supreme Court, at his chambers, 738 Broad Street, Newark, New Jersey, for an order to enter final judgment thereon.

Yours, etc., Jacob R. Mantel, Attorney of Plaintiff.

To James W. Wuchter, Defendant.

[fol. 15] State of Pennsylvania,
County of Lehigh, ss:

On the 9th day of February, 1926, before me the subscriber, a Notary Public, in and for said County and State, personally appeared John H. Diefenderfer, who, being duly

sworn according to law, deposes and says that he served a copy of the within notice on James W. Wuchter on the 1st day of February, 1926, by handing him a copy of said notice personally at his residence No. 103 S. Madison St., Allentown, Pa., and making known to him the contents thereof.

John H. Diefenderfer.

Sworn and subscribed before me this 9th day of Feb., 1926. Helen R. Larkin, Notary Public. My commission expires July 10, 1929. (Seal.)

[fol. 16] In Supreme Court of New Jersey

[Title omitted]

Rule for Entry of Final Judgment. Filed February 19, 1926

The writ of inquiry in the above stated cause having been duly issued and returned and it appearing thereby that there is due to said plaintiff from the said defendant, the sum of Seven Hundred Seventy Dollars and Twenty five cents ($770.25);

It is, on motion of Jacob R. Mantel, attorney for the above named plaintiff, ordered that judgment final be entered in the above stated cause in favor of the plaintiff and against the defendant for the sum of Seven Hundred Seventy Dollars ($770.25) and Twenty five cents, besides costs to be taxed.

Let the above order be entered in the minutes of the Court.

Dated February 13th, 1926.

Samuel Kalisch, Justice of the New Jersey Supreme Court.

Rule actually entered February 19, 1926.

Jacob R. Mantel, Attorney for Plaintiff.

[fol. 17] [Endorsement omitted.]

[fol. 18] IN SUPREME COURT OF NEW JERSEY

FINAL JUDGMENT

Plaintiff served and filed his complaint, but defendant failed to file an answer or take any other step in response to the Complaint, and thereupon a writ of inquiry was duly issued to assess the damages of the plaintiff, and after due proceedings thereon the damages of said plaintiff were duly assessed by the verdict of the jury upon said writ of inquiry, at the sum of $770.25, and the Court having ordered final judgment entered on said writ of inquiry and inquisition pursuant to the Statute.

Whereupon it is adjudged that the plaintiff, Michael Pizzutti, recover of the defendant, James W. Wuchter, the sum of Eight Hundred Fifty six Dollars and Forty seven cents, and his costs, which are taxed at the sum of Eighty-six Dollars and Twenty two cents, making in the whole the sum of Eight Hundred Fifty six Dollars and Forty seven cents.

Judgment entered February 19, 1926.

William S. Gummere, C. J.

$770	25
86	22
$856	47

[fol. 19] IN SUPREME COURT OF NEW JERSEY

[Title omitted]

NOTICE OF APPEAL AND GROUNDS THEREFOR.—Filed March 11, 1926

To Jacob R. Mantel, Esq., Attorney of Plaintiff:

Take notice that the defendant, James W. Wuchter, a resident and citizen of Allentown, in the State of Pennsylvania, does hereby appeal from the whole and every part of the final judgment entered in the above entitled cause in the New Jersey Supreme Court the nineteenth day of February, 1926, to the New Jersey Court of Errors and Appeals, in the last resort in all causes.

Further take notice the said defendant does hereby specify the following as his grounds of appeal:

(1) Because the New Jersey Supreme Court did not have jurisdiction over this defendant because process was not served personally upon this defendant in the State of New Jersey, and he did not appear in this action.

(2) The New Jersey Supreme Court was without jurisdiction over the defendant because Chapter 232 of an Act [fol. 20] of the Legislature of the State of New Jersey of 1924, under the terms of which the New Jersey Supreme Court claimed to have and exercised jurisdiction over the defendant in an action in personam, was repugnant to the Fourteenth Amendment of the Constitution of the United States, Section One, in that it deprives the defendant of liberty and property without due process of law and is therefore void.

(3) The New Jersey Supreme Court was without jurisdiction over the defendant because Chapter 232 of an Act of the Legislature of the State of New Jersey of 1924, under the terms of which the New Jersey Supreme Court claimed to have and exercised jurisdiction over the defendant in this action, is repugnant to the Fourteenth Amendment of the Constitution of the United States, Section One, in that it abridges the privileges and immunities of citizens of the United States and is therefore void.

(4) The New Jersey Supreme Court was without jurisdiction over the defendant because Chapter 232 of an Act of the Legislature of the State of New Jersey of 1924, under the terms of which the New Jersey Supreme Court claimed to have and exercised jurisdiction over the defendant, is repugnant to the Fourteenth Amendment of the Constitution of the United States, Section One, in that it denies to persons within the jurisdiction of the State of New Jersey equal protection of the laws and is therefore void.

(5) The New Jersey Supreme Court did not have juris- [fol. 21] diction over the defendant, a citizen of the State of Pennsylvania, because process was not served upon the defendant personally in the State of New Jersey, but serv-

ice thereof was attempted to be acknowledged by the Secretary of State of the State of New Jersey, pretending to act in compliance with the provisions of Section 3 of Chapter 232 of an Act of the Legislature of the State of New Jersey of 1924, and that any such attempt to pretended service was void and repugnant to the Fourteenth Amendment to the Constitution of the United States and deprives this defendant of liberty and property without due process of law.

(6) The New Jersey Supreme Court was without jurisdiction over the defendant because Chapter 232 of an Act of the Legislature of the State of New Jersey of 1924, under the terms of which the New Jersey Supreme Court claimed to have and exercised jurisdiction over the defendant, was repugnant to Article IV, Section 2 of the Constitution of the United States, in that it deprived this defendant of all privileges and immunities of the citizens in the several States, and is therefore void.

For all of which matters defendant prays that the said judgment in the New Jersey Supreme Court may be reversed and set aside.

Dated March 8th, 1926.

McDermott, Enright & Carpenter, Attorneys for Defendant Appellant, specially appearing for the purpose of prosecuting this appeal and for no other purpose.

[fols. 22 & 23] [File endorsement omitted.]

Service of a copy hereof is hereby acknowledged this 9th day of March, 1926.

Jacob R. Mantel, Attorney of Plaintiff Appellee.

[fol. 24] In Court of Errors and Appeals of New Jersey

No. 68. May Term, 1926

Michael Pizzutti, Plaintiff Respondent,

vs.

James W. Wuchter, Defendant Appellant

Argued May 20th, 1926. Decided October 18th, 1926

Opinion—Filed October 18, 1926

P. was driving a team of horses attached to a wagon on a public highway in this State. W. a resident of Pennsylvania, was driving his automobile in the same direction on said highway. W. drove his car so it crashed into the rear of P.'s wagon, injuring P., damaging his wagon, and injuring his horses. P. instituted suit against W. in the Supreme Court. W. was served with process under the provisions of the act known as Chapter 232 of the Laws of 1924 (P. L. 1924, p. 517). W. interposed no defense. Judgment interlocutory was taken against him. A writ of inquiry was issued. Notice of its proposed execution was served personally upon W. in Penna. W. did not appear. Judgment final was entered. W. then appealed to this Court contending that the said act under which process was served upon him was unconstitutional because it deprived him of his property without due process of law in contravention of the rights guaranteed him by Section 1 of the 14th Amendment to the Federal Constitution and by Section 2 of Article IV of the same document. Held that Chapter 232 of the Laws of 1924 (P. L. 1924, p. 517) is constitutional.

On Appeal from the Supreme Court

For the Defendant Appellant: McDermott, Enright & Carpenter, Esqrs., James D. Carpenter, Jr., Esq., of Counsel.

For the Plaintiff Respondent: Jacob R. Mantel, Esq.

The opinion of the Court was delivered by

KATZENBACH, J.:

This is an appeal from a judgment of the Supreme Court. The appellant was the defendant below. The cause of action arose out of a collision between vehicles owned and operated at the time of the accident by the plaintiff and defendant. On September 17th, 1925, Michael Pizzutti, the plaintiff below (hereinafter referred to as the plaintiff) was driving a team of horses on a public highway in the Township of Millburn, in Essex County. James W. Wuchter, the defendant below (hereinafter referred to as [fol. 25] the defendant) as driving an automobile in the same direction as the plaintiff was driving. The automobile approached the rear of plaintiff's wagon, and as claimed by the plaintiff, was so negligently operated that it crashed into the rear of plaintiff's wagon, injuring the plaintiff, damaging the wagon and harness, and injuring the horses. The plaintiff resided in Union County. The defendant was a resident of Allentown, Pennsylvania. The plaintiff instituted an action in the Supreme Court against the defendant to recover the damages he had sustained as a result of the accident. The venue was laid in Union County, the residence and domicile of the plaintiff. The defendant being a non resident of New Jersey, service of process was made upon the Secretary of State in pursuance of the provisions of Chapter 232 of the Laws of 1924 (P. L. 1924, p. 517). The provisions of Section 1 of said act under which process was served are as follows:

"1. From and after the passage of this act any chauffeur, operator, or owner of any motor vehicle, not licensed under the laws of the State of New Jersey, providing for the registration and licensing of motor vehicles, who shall accept the privilege extended to non resident chauffeurs, operators, and owners by law of driving such a motor vehicle or of having the same driven or operated in the State of New Jersey, without a New Jersey registration or license, shall by such acceptance and the operation of such automobile within the State of New Jersey, make and constitute the Secretary of State of the State of New Jersey, his, her, or their agent for the acceptance of process in any civil

suit or proceeding by any resident of the State of New Jersey against such chauffeur, operator, or the owner of such motor vehicle arising out of or by reason of any accident or collision occurring within the State in which a motor vehicle operated by such chauffeur, or operator, or such motor vehicle is involved."

The defendant interposed no defense. Judgment interlocutory was entered. A writ of inquiry directed to the Sheriff of the County of Union was issued. Notice of the execution of the writ of inquiry was served upon the defendant personally at his residence in Allentown, Pennsylvania. The defendant did not appear in person or by attorney at the inquisition. The jury summoned found in favor of the plaintiff and judgment for the amount found and taxed costs was duly entered. This judgment the defendant now appeals to this Court.

While the defendant has filed six grounds of appeal they merely state in different verbiage one ground for reversal, namely, that the act (Chapter 232 of the Laws of 1924) [fol. 26] under which the plaintiff claims that the Supreme Court had jurisdiction over the defendant is unconstitutional in that it deprives the defendant of his property without due process of law in contravention of the rights guaranteed to him by Section 1 of the 14th Amendment of the Federal Constitution, and by Section 2 of Article IV of the same document.

To support the contention that the act of 1924 is unconstitutional the appellant relies upon a line of decisions in the Federal Courts, of which the leading case is Pennoyer vs. Neff, 95 U. S. 714, to the effect that under Section 1 of the 14th Amendment of the Federal Constitution service on a non-resident by publication, or upon an agent who has not been specifically authorized to receive service for the non-resident deprives such non-resident of property without due process of law where the Court has attempted to render a personal judgment against the non-resident. We do not question the correctness of these decisions. We have recognized the soundness of the reasoning upon which they are based by following them in opinions rendered in this Court, as for example, in the cases of Blessing vs. McLinden, 81 N. J. L. 379, and Redzina vs. Provident Institution for Sav-

ings in Jersey City, et al., 96 N. J. E. 346. We think, however, that in the instant case there exists a feature not existing in the line of cases mentioned which differentiates the present case from the line of cases mentioned. This ground of differentiation is the power of the State to prohibit a non resident from doing acts within the State dangerous to life and property, unless such non resident consents to the exercise of jurisdiction over him in our Courts in causes of action growing out of the commission of such acts within this State. In other words it is the exercise of the police power of the State in the interest of public safety.

The use of the automobile has rapidly increased. The costly systems of improved roads, which almost every State has undertaken to build in the past few years, has been a factor in increasing the number of users of cars. There are many who seem to do nothing but tour the country from east to west and from north to south. They appear to live [fol. 27] in their automobiles. A car is no longer deemed merely a convenience. It is in the life of today a necessity. With the increase in the number of automobiles upon our highways there has been a corresponding increase in the number of accidents. The automobile is an instrument highly dangerous in its use when improperly operated. A driver with a good eye, steady hand, and good judgment, calmly exercised, is necessary to insure the careful operation of an automobile. Most accidents are due to speed. The speed which a car can quickly attain also makes it relatively easy for a driver involved in an accident to make good his escape. These conditions undoubtedly prompted the Legislature of this State to enact the statute under consideration to protect the persons and property of its citizens from injury caused by non residents who operate automobiles within the state. By this legislation is a non resident deprived of his property without due process of Law? We think not. It was held in the case of Kane vs. New Jersey, 81 N. J. L. 594, affirmed in 242 U. S. 160, that a State could without violating the Constitution of the United States, forbid a non resident to operate an automobile within the State, unless he had authorized a State official to receive service of process in actions instituted against him which were the result of the operation of his car within the State. This decision was the result of a law enacted by this

State which provided that no person, whether a resident or non-resident, should drive an automobile upon a public highway of the State unless the automobile should have been registered under the statute, and that a non-resident owner should appoint the Secretary of State his attorney upon whom process might be served in any action or legal proceedings caused by the operation of his registered motor vehicle, within this State, against such owner. The act prescribed a penalty for its violation. Kane, a resident of New York, failed to comply with the statute and was arrested in this State while driving his car from New York to Philadelphia. Kane claimed the statute invalid on the same grounds as advanced in the present case. Kane was convicted. The conviction was affirmed by the Supreme Court, this Court, and the United States Supreme Court. In delivering the opinion in the U. S. Supreme Court, Mr. Justice Brandeis [fol. 28] said:

"We know that ability to enforce criminal and civil penalties for transgression is an aid to securing observance of laws. And in view of the speed of the automobile and the habits of men, we cannot say that the Legislature of New Jersey was unreasonable in believing that ability to establish, by legal proceedings within the State, any financial liability of non-resident owners, was essential to public safety. There is nothing to show that the requirement is unduly burdensome in practice. It is not a discrimination against non-residents, denying them equal protection of the law. On the contrary, it puts non-resident owners upon an equality with resident owners."

This case settled the proposition that a state may constitutionally forbid a non-resident from operating an automobile within the State unless he expressly authorized an official of the State to accept service of process in suits growing out of the operation of his automobile within the State.

The statute under consideration is but another method of reaching the same result. It does not require a non-resident to expressly authorize the acceptance of process upon him by deputizing an official to act as his attorney for such purpose, but provides that if he does operate an automobile within the State this act upon his part shall be equivalent

of the express appointment under the statute declared valid in Kane vs. New Jersey, supra, for service of process in actions arising in this State from the operation of his motor vehicle. It substitutes an implied consent for the express consent. Instead of requiring the non-resident to stop at the border of the State and obtain permission to enter the State, which is granted upon conditions, the non-resident is allowed to enter subject to the same conditions. It is a quicker and easier method of obtaining the result desired, namely, jurisdiction of our courts over the non-resident in actions arising out of the operation of the automobile within the State. A non-resident is presumed to know the law. He is chargeable with knowledge of the laws of a State into which he brings his automobile so far as they affect the use of his car while in the foreign state.

We think the basis of jurisdiction in the present case over the defendant, who was not a citizen of this State, not served with process within the state, and who has not expressly consented to the exercise of jurisdiction of our [fol. 29] courts over him, rests upon the doctrine that a State may, without violating any constitutional limitation, forbid the doing of certain acts within the State unless and until the person who does the acts has consented to the jurisdiction of the courts of the State as to causes of action growing out of the doing of such acts within this State. It is within the power of a State to provide by law that the doing of such acts by a non-resident as the State can prohibit shall subject the non-resident doing them to the jurisdiction of our courts as to such actions as arise within the territorial limits of the State.

This is the same theory which has been applied to other fields of law to give a state jurisdiction in matters arising within the State. It has been quite common for a state to forbid the transaction of business by a foreign corporation within its borders unless the corporation submits to service of process upon it in the manner fixed by statute in actions brought against it which have arisen within the State. In such cases the corporation, by doing business in the foreign state, accepts the conditions and submits itself to the jurisdiction of the Courts of the State in the same manner as does the non-resident automobile owner

or operator who brings his car within the State for operation on our Highways.

It is urged that such a statute as the one being considered is a hardship upon a non-resident because it requires him to come to a foreign state to defend an action which may be without merit. This argument is easily answered by saying that the burden upon the non-resident is no greater than upon the citizen of a state who has suffered an injury or damage within the State of his domicile at the hands of a non-resident automobile owner or operator and who may be obliged to go to a foreign state, as for example, California to institute his suit for damages for an accident which arose through the courtesy of his State in extending to a non-resident the use of its highways. Such laws as the one under consideration seem but the reasonable exercise of the rights of a state for the protection of [fols. 30 & 31] its own citizens. If non-residents feel the law harsh they can easily avoid its operation, so far as they are concerned, by refraining from operating their automobiles within the territorial limits of the States which have enacted such laws.

These views are but an amplification of the views expressed by Mr. Justice Campbell in the case of Martin vs. Condon, 125 Atl. Rep. 738 (not yet officially reported) upon a motion to set aside service of process made under Chapter 232 of the Laws of 1924. In the opinion in that case reference is made to the case of Powloski vs. Hoss, 144 N. E. Rep. 700, which upholds a Massachusetts statute similar in its provisions to the act of this State.

This disposes of the single question argued, namely, whether Chapter 232 of the Laws of 1924 is unconstitutional.

The judgment of the Supreme Court is affirmed.

[File endorsement omitted.]

[fols. 32-40] In Court of Errors and Appeals of New Jersey

[Title omitted]

Order of Affirmance—Filed October 27, 1926

The defendant appellant, having appealed to this Court from a judgment rendered in the Supreme Court (Union Circuit) in the sum of Seven Hundred Seventy Dollars and Twenty-five Cents ($770.25) and Eighty-six Dollars and Twenty-two Cents ($86.22) costs, making a total of Eight Hundred Fifty-six dollars and forty-seven cents ($856.47) and the Court having considered said appeal and being of the opinion that the judgment of the Supreme Court should be affirmed, it is on this eighteenth day of October, 1926,

Ordered, that the judgment of the Supreme Court (Union Circuit) be and the same is hereby affirmed with costs and the record be remitted to the Court below to be proceeded with according to law and the practice of said Court.

Rule entered this — day of October, 1926.

On motion of

Jacob R. Mantel, Attorney for Plaintiff Respondent.

[File endorsement omitted.]

[fol. 41] In Court of Errors and Appeals of New Jersey

Writ of Error

United States of America, ss:

[Seal District Court of the United States, District of New Jersey.]

The President of the United States to the Honorable Judges of the New Jersey Court of Errors and Appeals, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said New Jersey Court of Errors and Appeals before you, or

some of you, being the highest court of law or equity of said State in which a decision could be had in the said suit between Michael Pizzutti, plaintiff-respondent, and James W. Wuchter, defendant-appellant, wherein was drawn in question the validity of a statute of the State of New Jersey, to wit, Chapter 232 of the Laws of 1924, on the ground of its being repugnant to the Constitution and Laws of the United States, and the decision is in favor of its validity, to the great damage of the said James W. Wuchter; we being willing that error, if any hath been, should be duly corrected and full and complete justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the 18th day of November, next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and Constitution of the United States should be done.

[fols. 42 & 43] Witness the Honorable William Howard Taft, Chief Justice of the said Supreme Court, the 3d day of November, in the year of our Lord One Thousand Nine Hundred and Twenty Six.

George T. Cramer, Clerk of the United States District Court for the District of New Jersey, by R. S. Chevrier, Deputy.

[fol. 44] In Court of Errors and Appeals of New Jersey

[Title omitted]

Assignments of Error

James W. Wuchter by James D. Carpenter, Jr., his attorney, comes and files the following assignments of error upon which he will rely, and says:

(1) That in the record and proceedings in the above cause there is manifest error in this, that by the record aforesaid it appears that the judgment in the New Jersey Court of Errors and Appeals was given in favor of the defendant-in-error and against the plaintiff-in-error, and that by the judgment of the said Court of Errors and Appeals the final judgment of the New Jersey Supreme Court in favor of the defendant-in-error and against the plaintiff-in-error was affirmed, whereby the jurisdiction of the New Jersey Supreme Court over the plaintiff-in-error was sustained notwithstanding the fact that process of summons and complaint issuing out of the New Jersey Supreme Court was attempted to be served upon the plaintiff-in-error, who was a resident and citizen of the City of Allentown, State of Pennsylvania, by serving the same upon the Secretary of State of the State of New Jersey, in pretended compliance with the provisions of an Act of the Legislature of the State of New Jersey entitled, "An Act providing for the service of process in the civil suits upon non-resident chauffeurs, operators, or non-resident owners whose motor vehicles are operated within the State of New Jersey, with-[fol. 45] out being licensed under the provisions of the Laws of the State of New Jersey, providing for the registration and licensing of drivers and operators and of motor vehicles, requiring the execution by them of a power of attorney to the Secretary of State of the State of New Jersey to accept civil process for them under certain conditions," and known as Chapter 232 of the Laws of 1924, which said statute of the State of New Jersey was unconstitutional and in violation of the Fourteenth Amendment of the Constitution of the United States, by reason whereof the said New Jersey Supreme Court was without jurisdiction to enter the final judgment complained of against the plaintiff-in-error.

(2) Because the New Jersey Court of Errors and Appeals did by a final judgment entered therein on October 18, 1926, affirm the judgment of the New Jersey Supreme Court entered February 19, 1926, and did decide in favor of the validity of the said statute of the State of New Jersey known as Chapter 232 of the Laws of 1924, and did decide that the said statute was not repugnant to the Constitution or Laws of the United States, and particularly Section 2 of Article IV and Section 1 of the Fourteenth Amendment.

(3) Because the New Jersey Court of Errors and Appeals erred in affirming the judgment entered in the New Jersey Supreme Court February 19, 1926, in favor of Michael Pizzutti, defendant-in-error, and against James W. Wuchter, plaintiff-in-error, whereas neither the New Jersey Supreme Court nor the New Jersey Court of Errors and Appeals had jurisdiction over the defendant-plaintiff-in-error because process was not served personally upon the plaintiff-in-error in the State of New Jersey and he did not [fol. 46] appear in said action.

(4) The New Jersey Supreme Court was without jurisdiction over the defendant plaintiff-in-error, because Chapter 232 of an Act of the Legislature of the State of New Jersey of 1924, under the terms of which the New Jersey Supreme Court claimed to have and exercised jurisdiction over the defendant-plaintiff-in-error, in an action in personam, was repugnant to the Fourteenth Amendment of the Constitution of the United States, Section 1, in that it deprives the plaintiff-in-error of liberty and property without due process of law and is therefore void.

(5) The New Jersey Supreme Court was without jurisdiction over the defendant-plaintiff-in-error, because Chapter 232 of an Act of the Legislature of the State of New Jersey of 1924, under the terms of which the New Jersey Supreme Court claimed to have and exercised jurisdiction over the defendant-plaintiff-in-error in this action, is repugnant to the Fourteenth Amendment of the Constitution of the United States, Section 1, in that it abridges the privileges and immunities of citizens of the several States and is therefore void.

(6) The New Jersey Supreme Court was without jurisdiction over the defendant plaintiff-in-error because Chapter 232 of an Act of the Legislature of the State of New Jersey of 1924, under the terms of which the New Jersey Supreme Court claimed to have and exercised jurisdiction over the defendant, is repugnant to the Fourteenth Amendment of the Constitution of the United States, Section 1, in that it denies to persons within the jurisdiction of the State of New Jersey equal protection of the laws and is [fols. 47 & 47½] therefore void.

(7) The New Jersey Supreme Court did not have jurisdiction over the defendant-plaintiff-in-error, a citizen of the State of Pennsylvania, because process was not served upon the defendant-plaintiff-in-error personally in the State of New Jersey, but service thereof was attempted to be acknowledged by the Secretary of State of the State of New Jersey, pretending to act in compliance with the provisions of Section 2 of Chapter 232 of an Act of the Legislature of the State of New Jersey of 1924, and that any such attempt of pretended service was void and repugnant to the Fourteenth Amendment of the Constitution of the United States and deprives the plaintiff-in-error of liberty and property without due process of law.

(8) The New Jersey Supreme Court and the New Jersey Court of Errors and Appeals were without jurisdiction over the defendant-plaintiff-in-error because Chapter 232 of an Act of the Legislature of the State of New Jersey of 1924, under the terms of which the New Jersey Supreme Court claimed to have and exercised jurisdiction over the defendant-plaintiff-in-error, was repugnant to Article IV, Section 2 of the Constitution of the United States, in that it deprives this defendant-plaintiff-in-error of all privileges and immunities of citizens in the several States and is therefore void.

James D. Carpenter, Jr., Attorney for Plaintiff-in-Error.

[fol. 48] Citation, in usual form, showing service on Jacob R. Mantel, filed November 9, 1926, omitted in printing.

[fol. 49] Return to writ of error omitted in printing.

[fol. 50] In Supreme Court of the United States

Statement of Points to be Relied Upon—Filed December 1, 1926

To the Clerk of the Supreme Court of the United States:

The plaintiff-in-error will rely upon all the errors assigned in his assignments of error heretofore filed, which points will be grouped under the following heads:

(1) The New Jersey Statute, under the terms of which process against plaintiff-in-error was attempted to be served, is repugnant to the Fourteenth Amendment of the Constitution of the United States, Section One, in that it deprives the plaintiff-in-error of property without due process of law and is therefore void, and the judgment under review must therefore be reversed.

(2) The New Jersey Statute, under the terms of which process against plaintiff-in-error was attempted to be served, is repugnant to the Fourteenth Amendment of the Constitution of the United States, Section One, in that it abridges the privileges and immunities of citizens of the United States and is therefore void, and the judgment under review must therefore be reversed.

(3) The New Jersey Supreme Court was without jurisdiction over the plaintiff-in-error because Chapter 232 of the Laws of New Jersey of 1924, under the terms of which the New Jersey Supreme Court claimed to have and exer-
[fol. 51] cised jurisdiction over the plaintiff-in-error, is repugnant to the Fourteenth Amendment of the Constitution of the United States, Section One, in that it denied to the plaintiff-in-error the equal protection of the laws and the judgment of the New Jersey Court of Errors and Appeals must therefore be reversed.

James D. Carpenter, Jr., Attorney for Plaintiff-in-Error.

[fols. 52 & 53] STATE OF NEW JERSEY,
County of Hudson, ss:

I, James D. Carpenter, Jr., of full age, being duly sworn, according to law, do hereby swear that I am counsel for the plaintiff in error in the above entitled cause; that I served a copy of the foregoing statement of points to be relied upon on the defendant in error by mailing on November 30, 1926, a copy thereof by United States Mail, postage prepaid, addressed to Jacob R. Mantel, Esq., Mantel Building, Summit, N. J., which is the usual place of business of said Jacob R. Mantel.

I do further swear that on November 11, 1926, I served on said Jacob R. Mantel, attorney for the defendant in error, a copy of the designation of the parts of the record to be printed, (the original of which designation I at the same time mailed to the Clerk of the Supreme Court) by mailing the same by United States Mail, postage prepaid, to Jacob R. Mantel, addressed to him Mantel Building, Summit, N. J., which is the correct and true address of the said Jacob R. Mantel.

James D. Carpenter, Jr.

Subscribed and sworn to before me this 30th day of November, 1926. Alice M. Boyle, Notary Public of New Jersey. (Seal of Alice M. Boyle, Notary Public New Jersey.)

[fol. 54] [File endorsement omitted.]

[fol. 55] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed November 16, 1926

To William R. Stansbury, Esq., Clerk Supreme Court of the United States:

The plaintiff in error hereby designates the following parts of the record to be printed in the above entitled cause:

(1) The complete state of case entitled in the New Jersey Court of Errors and Appeals, which is attached to the Return.

(2) Opinion of the New Jersey Court of Errors and Appeals.

(3) Order of affirmance.

(4) Writ of Error.

(5) Assignments of Error.

(6) Citation and proof of service thereof.

(7) Certificate of Return of Secretary of State, State of New Jersey.

If it is usual to print the petition for writ of error that can be included, but we do not believe it is a necessary part of the record.

Respectfully yours, James D. Carpenter, Jr., Attorney for Plaintiff in Error.

[fol. 56] [File endorsement omitted.]

Endorsed on cover: File No. 32,286. New Jersey Court of Errors and Appeals. Term No. 729. James W. Wuchter, plaintiff in error, vs. Michael Pizzutti. Filed November 16th, 1926. File No. 32,286.

No. 142.

FILED
NOV 21 1927
CHARLES E. MOORE CROPLEY
Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

JAMES W. WUCHTER,
Plaintiff-in-Error,

vs.

MICHAEL PIZZUTTI,
Defendant-in-Error.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF NEW JERSEY.

BRIEF FOR PLAINTIFF-IN-ERROR.

JAMES D CARPENTER, JR.,
Of Counsel.

Hebrew 248/289

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in that it deprived the defendant of property without due process of law; and in that the said statute of the State of New Jersey was repugnant to Article IV, Section 2 of the Constitution of the United States, in that it deprived the defendant, plaintiff-in-error, of the privileges and immunities of citizens in the several States, and is therefore void (see Grounds of Appeal, R., 10, 11).

The Court of Errors and Appeals in an opinion by Mr. Justice Katzenbach, filed October 18, 1926, held that Chapter 232 of the Laws of 1924 of the State of New Jersey, was not repugnant to Section 1 of the Fourteenth Amendment of the Federal Constitution or to Section 2, Article IV of the same document, and that the Supreme Court had jurisdiction over the defendant, and affirmed the said judgment (R., 12).

3. JURISDICTION.

The jurisdiction of this Court is invoked under the Act of Congress of February 13, 1925, 43 Statutes at Large 937, amending Section 237 of the Judicial Code; Code of General Laws, Title 28, Section 344, page 986; which provides, *inter alia*:

> "A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had . . . where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, statutes or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

Statement of the Case.

The case comes before the Court on a writ of error to the Court of Errors and Appeals of New Jersey, to review a judgment of that Court affirming a judgment of the New Jersey Supreme Court in favor of the defendant-in-error against the plaintiff-in-error for $856.47, including costs. The action was brought in the Supreme Court by Michael Pizzutti, a resident of Summit, New Jersey, against James W. Wuchter, a resident of Allentown, Pennsylvania, to recover damages for personal injuries and property damage sustained in an accident which happened September 17, 1925, on a highway in Essex County, New Jersey, when an automobile driven by Wuchter collided with a horse and wagon driven by Pizzutti.

The plaintiff below in bringing this action complied with the provisions of Chapter 232 of the Laws of 1924, which provides, *inter alia*:

> "1. From and after the passage of this act any chauffeur, operator or owner of any motor vehicle, not licensed under the laws of the State of New Jersey, providing for the registration and licensing of motor vehicles, who shall accept the privilege extended to nonresident chauffeurs, operators and owners by law of driving such a motor vehicle or of having the same driven or operated in the State of New Jersey, without a New Jersey registration or license, shall, by such acceptance and the operation of such automobile within the State of New Jersey, make and constitute the Secretary of State of the State of New Jersey, his, her or their agent for the acceptance of process in any civil suit or proceeding

by any resident of the State of New Jersey against such chauffeur, operator or the owner of such motor vehicle, arising out of or by reason of any accident or collision occuring within the State in which a motor vehicle operated by such chauffeur, or operator, or such motor vehicle is involved."

The Sheriff's Return shows that he:

"Served within Summons and Complaint November 19th, A. D. 1926, upon James W. Wuchter, Deft., by leaving a copy of the same in the office of the Secretary of State, N. J., with Ernest R. Kerr, Chief Clerk in said Office (the Secretary of State being absent from his office), with a service fee of Two Dollars.

CHARLES H. REICHERT, Sheriff."

(R. 3).

On January 6, 1926, defendant having not appeared and no answer having been filed, judgment interlocutory by default was entered against him (R. 3).

On January 16, 1926, there was served on Mr. Wuchter personally at Allentown, Pennsylvania, notice that a writ of inquiry of damages would be executed on January 27th, at the Court House, Elizabeth, N. J. (R. 4). The damages were assessed before a Sheriff's jury on said writ of inquiry on January 27, 1926, and the jury returned a verdict for plaintiff against the defendant for $770.25 damages.

On February 9, 1926, there was served on Mr. Wuchter personally at Allentown, Pennsylvania, a notice that on Saturday, February 13, 1926, plaintiff would apply to a New Jersey Supreme Court Justice, at his chambers in Newark, for an order to enter final judgment on the writ of inquiry (R. 7). On February 13, 1926, Justice Kalisch of

the Supreme Court signed an order for the entry of judgment on the return of the writ of inquiry (R. 8), and final judgment was actually entered February 19, 1926, for $770.25 damages, and $86.22 costs (R. 9).

No appearance of any kind was entered for the defendant and nothing was done by him until after the entry of final judgment, when he took his appeal to the Court of Errors and Appeals.

The notice of appeal served by plaintiff in error specified, as permitted by the New Jersey practice, the grounds of appeal, and those grounds of appeal raised the precise Federal questions which are raised here.

The order affirming the judgment of the New Jersey Supreme Court was filed in the New Jersey Court of Errors and Appeals October 27, 1926 (R. 19). The writ of error was allowed by Chancellor Walker, as President Judge of the Court of Errors and Appeals, November 3, 1926 (R. 19).

Specifications of Error.

(1) The learned Court below erred in affirming the judgment of the New Jersey Supreme Court against plaintiff in error, and in holding that service of process in an action in the New Jersey Courts could be served upon the plaintiff in error, a resident of Allentown, Pennsylvania, by serving the same upon the Secretary of State of New Jersey under the provisions of Chapter 232, Laws of 1924 of New Jersey, whereas said statute was invalid and in contravention of the Constitution of the United States and particularly Section 1 of Article XIV of Amendments thereto.

(2) Because the New Jersey Court of Errors and Appeals did by a final judgment entered October 18, 1926, affirm the judgment of the New Jersey Supreme Court entered February 19, 1926, and did decide that Chapter 232 of the Laws of 1924 was not repugnant to Article IV, Section 2 of the Constitution of the United States, and that it did not deprive plaintiff-in-error of the privileges and immunities of citizens in the several States.

ARGUMENT.

POINT I.

This case is not controlled by the decision in Hess vs. Pawloski, 274 U. S. 352, for the reason that the New Jersey Statute does not require process to be forwarded to the non-resident and postponing of judgment awaiting an appearance.

The New Jersey Statute differs in certain vital respects from the Massachusetts Statute that was upheld by this Court in *Hess* vs. *Pawloski*, 274 U. S. 352.

The New Jersey Statute, Chapter 232, P. L. 1924, provides that the non-resident automobilist by accepting the privilege extended to non-resident chauffeurs, operators and owners by law of driving a motor vehicle in the State of New Jersey, "shall, by such acceptance and the operation of such automobile within the State of New Jersey, make and constitute the Secretary of State of the State of New Jersey, his, her or their agent for the acceptance of process in any civil suit or proceeding by any resident

of the State of New Jersey against such chauffeur, operator or the owner of such motor vehicle, arising out of or by reason of any accident or collision occurring within the State in which a motor vehicle operated by such chauffeur, or operator, or such motor vehicle is involved."

The statute contains no provisions, such as those mentioned in Mr. Justice Butler's opinion in *Hess* vs. *Pawloski*, *supra*, for sending notice of such service and a copy of the process forthwith by registered mail by the plaintiff to the defendant, and the defendant's return receipt, and plaintiff's affidavit of compliance with them, nor is there any provision in the New Jersey Statute "for such continuance as may be necessary to afford the defendant reasonable opportunity to defend the action", which is a highly important provision of the Massachusetts Statute.

The New Jersey Practice Act, as amended by P. L. 1912, Chapter 264, page 469, provides:

> "The first process in personal actions in cases where the plaintiff is not entitled to bail shall be a summons, a copy whereof shall be served on the defendant in person, or left at his usual place of abode. Said service shall be made forthwith after the process is delivered to the sheriff or other officer for service. If the defendant be a corporation, the summons shall be served as provided in the act entitled 'An act concerning corporations (Revision of 1896),' except that the service shall be made in such case forthwith after delivery of the summons to the sheriff. If the defendant be the board of chosen freeholders of any county or municipal corporation, or a township, the summons shall be served on the clerk or presiding officer of said board, or on the clerk of the municipality or township, or on the mayor or presiding officer of the governing body

> forthwith after it is delivered to the sheriff or other officer for service. And when the sheriff or other officer shall return the same 'served', the party shall be considered as in court, and be proceeded against accordingly; provided, if the defendant be the board of chosen freeholders of a county or a municipal corporation or a township, the sheriff or other officer shall in his return state on whom the summons was served." *Comp. Stat. Supp.*, Vol. 2, p. 2798.

The fact that notice of plaintiff's intention to assess damages on writ of inquiry before a sheriff's jury was served on the defendant personally in Pennsylvania, could not cure the failure to serve the summons and complaint upon him personally within the territorial limits of New Jersey.

Judgment interlocutory was entered by default against the defendant before any notice was served upon him, other than the statutory service upon the Secretary of State.

It is respectfully submitted that the New Jersey Statute is therefore void as repugnant to the Fourteenth Amendment, Section 1.

Pennoyer vs. *Neff*, 95 U. S., 714;
Goldey vs. *Morning News*, 156 U. S., 518;
McDonald vs. *Mabee*, 243 U. S., 90;
Flexner vs. *Farson*, 249 U. S., 289;
Pennsylvania Fire Insurance Co. vs. *Gold Issue Mining Co.*, 243 U. S., 93, 96.

POINT II.

The New Jersey Statute is repugnant to Article IV, Section 2 of the Constitution, in that none but residents may bring suits under it, and none but non-residents of New Jersey may be sued.

The title of Chapter 232, P. L. 1924 of New Jersey, expressly states that it is an act providing for the service of process in civil suits upon non-resident chauffeurs, operators or non-resident owners whose motor vehicles are operated within the State of New Jersey without being licensed.

Section 1 provides that such persons shall by the acceptance and operation of such automobile within the State of New Jersey make and constitute the Secretary of State his or her agent "for the acceptance of process in any civil suit or proceeding *by any resident of the State of New Jersey* against such chauffeur, operator or the owner of such motor vehicle, arising out of or by reason of any accident or collision occurring within the State in which a motor vehicle operated by such chauffeur, or operator, or such motor vehicle is involved".

Section 4 of the statute provides:

> "This act shall be construed to extend the right of service of process upon non-residents and shall not be construed as limiting any provision for the service of process now or hereafter existing."

Under this statute service of process can be made only upon non residents at the suit of residents of the State of New Jersey.

The Massachusetts Statute, which was construed in *Hess* vs. *Pawloski*, provided that "all lawful processes in any action or proceeding" against the non-resident, growing out of any accident or collision in which the non-resident might be involved while operating a motor vehicle in Massachusetts, might be served on the registrar.

Therefore, should there be an automobile accident in New Jersey, in which an automobile from another State should injure several persons, the residents of New Jersey would be permitted to sue the non-residents in the Courts of New Jersey by serving process upon the Secretary of State. If one of the persons injured were a non-resident, he could not bring his suit in New Jersey and have it tried with the resident's action, unless, possibly, he engaged the same attorney and joined his action with the resident's action. The non-resident plaintiff would have no right to start an independent action of his own in New Jersey against the non-resident unless he could effect personal service upon him, because the statute in question limits its benefits to residents.

> "The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by such state to the citizens of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the Federal Constitution. Corfield v. Coryell, 4 Wash. C. C. 371, 380, Fed. Cas. No. 3,230, per Washington, J.; Ward v. Maryland, 12 Wall. 418, 430, 20 L. ed.

449, 452, per Clifford, J.; Cole *v.* Cunningham, 133 U. S. 107, 114, 33 L. ed. 538, 542, 10 Sup. Ct. Rep. 269, per Fuller, Ch. J.; Blake *vs.* McClung, 172 U. S. 239, 252, 43 L. ed. 432, 437, 19 Sup. Ct. Rep., 165, per Harlan, J.

"But, subject to the restrictions of the Federal Constitution, the state may determine the limits of the jurisdiction of its courts, and the character of the controversies which shall be heard in them. The state policy decides whether and to what extent the state will entertain in its courts transitory actions, where the causes of action have arisen in other jurisdictions. Different states may have different policies, and the same state may have different policies at different times. But any policy the state may choose to adopt must operate in the same way on its own citizens and those of other states. The privileges which it affords to one class it must afford to the other. Any law by which privileges to begin actions in the courts are given to its own citizens and withheld from the citizens of other states is void, because in conflict with the supreme law of the land."

Mr. Justice Moody in *Chambers* vs. *Baltimore & Ohio R. Co.*, 207 U. S., 142; 52 L. ed. 146.

In *Cole* vs. *Cunningham*, 133 U. S., 107, 114, Chief Justice Fuller, speaking for the Court said:

"The intention of Section 2 of Article 4 was to confer on the citizens of the several states a general citizenship, and to communicate all the privileges and immunities which the citizens of the same state would be entitled to under the like circumstances, and this includes the right to institute actions."

In *Paul* vs. *Virginia*, 8 Wall., 168, 180, the Court speaking by Mr. Justice Field said:

> "It was undoubtedly the object of the clause in question to place the citizens of each state upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states are concerned. It relieves them from the disabilities of alienage in other states; it inhibits discriminating legislation against them by other states; it gives them the right of free ingress into other states, and egress from them; it insures to them in other states the same freedom possessed by the citizens of those states in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other states the equal protection of their laws."

The title of the act under consideration shows that it was directed solely against non resident chauffeurs, operators and non-resident owners whose motor vehicles are operated within the State of New Jersey. Should a resident of New Jersey abscond from or move from this State, after having an automobile accident, service of process could not be made upon him under this statute, but the plaintiff, whether resident or non resident, would be obliged to follow him and effect service where he could be found. A non-resident, however, is served under the provisions of this statute with ease, provided the suit is brought by a resident.

It would seem that where a statute is thus aimed solely at non residents, for the benefit of residents alone, and non-residents are denied all of its benefits in case they have the same grievances as residents, the statute is void.

Blake vs. *McClung*, 172 U. S. 239; 176 U. S. 59;
Sully vs. *American National Bank*, 178 U. S. 289;

Southern Railway Co. vs. *Greene*, 216 U. S. 400;
Herndon vs. *Chicago, R. I. & P. R. Co.*, 218 U. S. 135;
Roach vs. *Atchison, T. & S. F. R. Co.*, 218 U. S. 159.

It is respectfully submitted therefore the judgment under review must be reversed for the reason that Chapter 232 of the Laws of 1924 of the State of New Jersey is repugnant to Section 1 of the Fourteenth Amendment, and is also repugnant to Section 2 of Article IV, for the reasons hereinabove stated.

CONCLUSION.

It is respectfully submitted that the judgment under review must be reversed.

JAMES D. CARPENTER, JR.,
Of Counsel with Plaintiff in Error.